DATE OF DECISION: 20.11.1995.

HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO. 766 OF 1994.

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ASHOK alias CHAKLI NANUBHAI GOHIL
Vs.
THE STATE OF GUJARAT.

- -

FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE K. R

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AND

THE HONOURABLE Mr.JUSTICE M. H. KADRI.

1. Whether Reporters of Local Papers
may be allowed to see the Judgment? YES/NO.

2. To be referred to the Reporter or
not ? YES/NO.

3. Whether Their Lordships wish to see
the fair copy of Judgment ? YES/NO.

4. Whether this case involves a subst-
-antial question of law as to the
interpretation of the Constitution
of IndT....R

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thereunder ? YES/NO.

5. Whether it is to be circulated to
the Civil Judges ? YES/NO.

Mr.K.G.Sheth, Advocate, (appointed) for the Appellant.

Mr.J.A.Shelat, A.P.P., for the Respondent-State.

CORAM: K.J.VAIDYA & M.H.KADRI, JJ.
20th November, 1995.

ORAL JUDGMENT. (per VAIDYA, J.)

Ashok alias Chakli Nanubhai Gohil, by this appeal has brought under challenge the impugned judgment and order dated l8.5.l994, rendered in Sessions Case No.2 of l993, passed by the learned Additional Sessions Judge, Kheda at Anand, wherein, on his coming to be tried for the alleged offence punishable under S.302 of I.P.Code, was at the end of the trial, convicted for the same and sentenced to imprisonment for life and fine of Rs.l,000/- and in default to undergo further R.I. for six months.

2. In substance, according to the prosecution, the incident in question wherein Ashok @ Chakli Nanubhai Gohil gave blows with a wooden log to Ghanshyam on his head and other parts of the body bringing about his death, took place on 9.7.1992 near Kailashbhoomi in the town of Anand. Further according to the prosecution, this incident was seen by P.W.3 - Raju Thakore, aged 17. It is further the case of P.W.2 - Kashiben Fatabhai, mother of deceased Ghanshyam that on 9.7.1992 at about 7.00 p.m. to 8.00 p.m. the accused came to her house and informed her that somebody had beaten Ghanshyam and that he was lying near Kailashbhoomi, and thereafter he went away. P.W.2 - immediately thereafter went to Kailashbhoomi, and there she found Ghanshyam lying dead, injured, and in bleeding condition. Thereafter she went to Anand Town Police Station and gave her complaint Exh.29, which was recorded by P.W.11 - Police Inspector D.N.Mishra. On the basis of this information, after the investigation was over, appellant came to be

charge-sheeted for the aforesaid offence, to stand trial before the Sessions Court.

3. At the trial, the appellant-accused pleaded not guilty to the charge, and claimed to be tried. It is his case that he has been falsely implicated at the instance of P.W.3 to whom he owed some amount for bananas. The trial court, relying upon the evidence of solitary eye-witness P.W.3 as corroborated by the evidence of P.W.5 - Ratilal Takhabhai, and the medical evidence of P.W.1 Dr.V.P.Khanapura, convicted and sentenced the appellant-accused as stated above in paragraph 1 giving rise to the present appeal.

4. Heard Mr.K.G.Sheth, Ld.Advocate (appointed) for the appellant-accused and Mr.J.A.Shelat, ld.APP for the Respondent-State.

5. On going through the prosecution evidence, it is indeed clear that P.W.3 aged 17 is the solitary eye-witness to the incident. Not only that, but it further appears that this P.W.3 appears to be more or less a chance witness, as ordinarily he had no reason to be at the place of incident, when the alleged incident took place. It is true that the medical evidence to some extent does corroborate his say. But the corroboration rendered by the medical evidence, helps the prosecution case as regards injury only, but it cannot go any further beyond this and mechanically connect the accused with the crime alleged against him. At this stage, an attempt was made by the ld.APP to submit that over and above the evidence of P.W.3 there was further evidence on record, that of P.W.4 Natubhai Jabbarsinh, and P.W.5 Ratilal Takhabhai. According to the ld.APP, these two witnesses to some extent do corroborate the evidence of P.W.3, and in that view of the matter, it cannot be said that P.W.3 is not corroborated by other evidence. Now, so far as P.W.4 Natubhai is concerned, he had not seen the incident. He is examined to prove merely the presence of P.W.3 only at the place and time of the incident. According to P.W.4, on the date of the incident, he had asked P.W.3 to stand near his larry as he wanted to go to the Station to take some food. At that time, accused and Ghanshyam were bitterly arguing. Further, when he came back, he inquired from P.W.3 as to what had happened, to which he replied that Ashok, after giving blow on the head of Ghanshyam had run away. Now, the evidence of this witness do not inspire our confidence, as it appears to have been created just to prove the presence of P.W.3. This takes us to another witness P.W.5.

According to him, on the date of the incident, he was on his tea larry and there was a heated exchange of words between the accused and the deceased. He had seen the accused taking Ghanshyam by holding his hand towards Borsad Chokdi. He had not seen the main incident. Now, this witness in cross-examination admitted that near his tea larry, there are other pan-gallas and also the shop of a barber. Not only that, but many persons pass-by the road. He has also admitted in cross-examination that Lotiya Bhagol police chowky is near to his tea larry. Further still, not only that, but he even admitted going to the police chowky for giving tea. Now, despite the fact that this witness is having a tea larry nearby the police chowky, he has done nothing to inform the police about the alleged incident. Not only that, but despite the admitted fact that many persons pass by the road and others were having larries near the scene of the incident, none has been examined. Thus reading the evidence of P.W.3, P.W.4 and P.W.5, we feel it quite risky to confirm the order of conviction of the appellant-accused and that too under S.302 I.P.Code and sentencing him to life imprisonment, on the basis of the evidence of a solitary eye-witness, a boy, who has more or less impressed us as a chance witness, and the unnatural conduct of P.W.5. The matter does not rest here. Had indeed P.W.3 seen the incident, then having regard to the ordinary human conduct, he would have certainly informed the mother of Ghanshyam. If not that, he would have filed the complaint also before the police. Nothing of the sort was done, and still the prosecution wants us to believe that P.W.3 is a truth incarnation, and whatever he has deposed before the court is gospel truth, and on the basis of the same, we should confirm the order of conviction and sentence under S.302 I.P.Code. This simply cannot be done. As a matter of fact, having regard to the facts and circumstances of the case, admittedly, it was the accused who had gone to the house of the mother of Ghanshyam, viz. P.W.2. Now ordinarily, after committing murder, one would not go to inform the mother that her son was lying injured, because at that point of time, he was not knowing whether Ghanshyam had passed away or not, and in case the mother immediately reaches the scene of offence and Ghanshyam discloses the name of the assailant, then in that case, he would be inviting trouble at his own hands. Thus, this sort of the prosecution story, in the facts and circumstances of the case, appears to be quite improbable and therefore, not acceptable. Taking the overall view of the matter, on the basis of such weak evidence, we do not want to trade a dangerous zone risking the life sentence to the

accused, and in that view of the matter, we think this is one of the fittest case wherein benefit of reasonable doubt must be given to the appellant-accused.

5. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence passed by the trial court is quashed and set aside. The appellant-accused is ordered to be set at liberty forthwith, unless his presence is so required in jail in connection with any other proceeding pending against him. Fine if paid, be refunded to him.

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